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1976

STATE OF ILLINOIS

THE
ILLINOIS SECURITIES LAW
OF 1953

As Amended Through January 1, 1976

Compiled by
MICHAEL J. HOWLETT
SECRETARY OF STATE

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UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

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THE ILLINOIS SECURITIES LAW OF 1953

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THE ILLINOIS SECURITIES LAW OF 1953

Approved July 13, 1953, effective January 1, 1954

As Amended Through January 1, 1976

AN ACT relating to securities; defining terms used; providing for the registration of securities and for the regulation of the sale thereof; providing for the registration of dealers in and salesmen of securities; fixing penalties for violations of this Act; and repealing a certain Act herein named except provisions of said Act continued in force and effect.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SHORT TITLE

Sec. 1. This Act shall be known as "The Illinois Securities Law of 1953".

DEFINITIONS

Sec. 2. As used in this Act, the terms defined in Sections 2.1 to 2.18, inclusive, shall have the meanings therein ascribed.

Sec. 2.1. "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, investment fund share, face-amount certificate, voting-trust certificate, fractional undivided interest in oil, gas, or other mineral lease, right, or royalty, option, put, call, privilege, indemnity or any other right to purchase or sell a contract for the future delivery of any commodity offered or sold to the public and not on a registered contract market, or, in general, any interest or instrument commonly known as a security, or any certificate of deposit for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Sec. 2.2. "Issuer" means every person who shall have issued or proposes to issue any security; except that (1) with respect to certificates of deposit, voting-trust certificates, collateral-trust certificates, and certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), "issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust, agreement or instrument under which such securities are issued; (2) with respect to trusts other than those specified in clause (1) above, where the trustee is a corporation authorized to accept and execute trusts, the "issuer

means the entrusters, depositors or creators of the trust and any manager or committee charged with the general direction of the affairs of the trust pursuant to the provisions of the agreement or instrument creating the trust; (3) with respect to equipment trust certificates or like securities, "issuer means the person to whom the equipment or property is or is to be leased or conditionally sold; and (4) with respect to fractional interests in oil, gas or other mineral lease, right, or royalty, "issuer" means the owner of the right or interest therein (whether whole or fractional), in which fractional interests are created by such owner for the purpose of sale.

Sec. 2.3. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust or any unincorporated organization. As used in this Section, the word "trust" includes only a trust where the interest or interests of the beneficiary or beneficiaries is a security.

Sec. 2.4. "Controlling person" means any person selling a security, or group of persons acting in concert in the sale of a security, owning beneficially (and in the absence of knowledge, or reasonable grounds for belief, to the contrary, record ownership shall for the purposes hereof be presumed to be beneficial ownership) either (i) 25% or more of the outstanding voting securities of the issuer of such security where no other person owns or controls a greater percentage of such securities, or (ii) such number of outstanding securities of the issuer of such security as would enable such person, or group of persons, to elect a majority of the board of directors or other managing body of such issuer. In case of unincorporated issuers, "controlling person" means any person selling a security, or group of persons acting in concert in the sale of a security, who directly or indirectly controls the activities of the issuer.

Sec. 2.5. "Sale" or "sell" shall have the full meaning of that term as applied by or accepted in courts of law or equity, and shall include every disposition, or attempt to dispose, of a security for value. "Sale" or "sell" shall also include a contract to sell, an exchange, an attempt or an offer to sell, an option of sale or a solicitation of an offer to buy, directly or indirectly; provided that the circulation or publication of an identifying statement or circular or preliminary prospectus, as defined by rules or regulations of the Secretary of State, shall not be deemed a sale or an attempt or offer to sell or solicitation of an offer to buy. Any security given with or as a bonus on account of, any purchase of securities or property shall be conclusively presumed to constitute a part of the subject of such purchase and shall be deemed to have been sold within the meaning of this Section. A privilege to convert a security into another security shall not be deemed a sale of such other security, provided no consideration from the holder in addition to the surrender or cancellation of the convertible security is required to effect the conversion.

Sec. 2.6. "Underwriter" means any person who has purchased a security from an issuer or a controlling person with a view to, or who sells a security for an issuer or a controlling person in connection with, the distribution thereof, or who participates or has a participation in the direct or indirect underwriting of such distribution; but such term shall not include a person whose interest is limited to a commission or discount from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission or discount. An underwriter shall be deemed to be no longer an underwriter of a security after he has completely disposed of his allotment of such security or, if he did not purchase the security, after he has ceased to sell such security for the issuer or controlling person.

Sec. 2.7. "Dealer" means any person, other than a salesman, or controlling person and other than a bank organized under the banking laws of this State or of the United States or other than a trust company organized under the laws of this State, who engages in this State, either for all or part of his time, directly or indirectly, as agent, broker or principal, in the business of offering, selling, buying and selling, or otherwise dealing or trading in securities issued by another person.

Sec. 2.8. "Registered dealer" means a dealer registered under Section 8 of this Act.

Sec. 2.9. "Salesperson" means an individual, other than an issuer or a dealer, employed or appointed or authorized by a dealer, issuer or controlling person to sell securities in this State. The partners or officers of a dealer or issuer shall not be deemed to be salespersons within the meaning of this definition if they are not or have not been regularly engaged in securities sales activities.

Sec. 2.10. "Registered salesman" means a salesman registered under Section 8 of this Act.

Sec. 2.11. "Investment adviser" means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who for compensation and as part of a regular advisory business issues or promulgates analyses or reports concerning securities; but "investment adviser" does not include:

(1) a bank or trust company, or the regular employees of a bank or trust company;

(2) any lawyer, accountant, engineer, geologist, or teacher whose performance of such services is solely incidental to the practice of his profession;

(3) any registered dealer or partner, officer, director, or regular employee of a registered dealer, or registered salesman;

(4) any publisher or regular employee of such publisher of a bona fide newspaper, news magazine, or business or financial publication of regular and established paid circulation.

(5) any person whose advice, analyses or reports relate only to securities which are direct obligations of, or obligations guaranteed as to principal or interest by the United States, any State of the United States or any political subdivision of any such State, or any public agency or public instrumentality of any one or more of the foregoing; or

(6) any other persons who are not within the intent of this Section as the Secretary of State may designate by rules and regulations or order.

Sec. 2.12. "Registered investment adviser" means an investment adviser registered under Section 8 of this Act.

Sec. 2.13. "Effective date" when used with respect to a registration under the Federal Securities Act means the date upon which a statement for the registration of securities under said Act first becomes effective; provided, that in case of securities initially registered under the Federal Securities Act for the invitation of competitive bids, "effective date" means the date upon which a post-effective amendment to the registration statement filed under the Federal Securities Act relating to such securities becomes effective for the first offering of such securities otherwise than for such invitation.

Sec. 2.14. "Face amount certificate contract" means any form of "face amount certificate" or "periodic payment plan certificate" (as so designated and defined under the Federal Investment Company Act of 1940) and shall also mean any form of annuity contract (other than an annuity contract issued by a life insurance company authorized to transact business in this State), or installment face amount certificate contract, or installment face amount certificate, or installment participation certificate, or installment face amount certificate bond, or similar security evidencing an obligation on the part of the issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, or to pay the proceeds of liquidation of an interest in certain specified securities or in a unit or fund, upon the payment of a single lump sum at the date of issuance, or in consideration of the payment of periodic installments of a stated or determinable amount.

Sec. 2.15. "Investment fund shares" means securities issued by persons known as "investment funds" or "investment companies" or "investment trusts" but such term shall not include securities issued by persons not within the intent of this Section as the Secretary of State may designate by rules and regulations or order.

Sec. 2.16. "Securities Commissioner" means the chief clerk of the Securities Department, appointed by the Secretary of State.

Sec. 2.17. "Federal Securities Act" means the Act of the Congress of the United States known as the Securities Act of 1933, as amended.

Sec. 2.18. "Clearing corporation" means a clearing corporation as defined in Section 8-102 of the Uniform Commercial Code, as amended.

EXEMPT SECURITIES

Sec. 3. The provisions of Sections 5 and 7 of this Act shall not apply to any of the following securities:

A. Securities issued, or the principal and interest of which are guaranteed, by the United States or by any state, territory or possession thereof, or by any political sub-division of any such state, territory or possession, or by the District of Columbia, or by any public agency or public instrumentality of any one or more of the foregoing;

B. Any securities issued, or the principal and interest of which are guaranteed, by any foreign government with which the United States is at the time of the sale thereof maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment for the purpose of fulfilling the obligations evidenced by such securities; provided (1) that such securities were issued prior to July 27, 1933 or (2) that registration of such securities under the Federal Securities Act is in effect at the time of sale;

C. Securities issued by and representing an interest in, or direct obligation of, any bank incorporated under the laws of the United States, or issued by and representing an interest in, or direct obligation of, any banking institution incorporated under the laws of, and subject to supervision by, any state, territory or possession of the United States or the District of Columbia, or issued by and representing an interest in, or direct obligation of, any trust company incorporated under the laws of this State; or any certificate or fiduciary account representing participation in a common trust fund administered by any bank or trust company under the "Common Trust Fund Act", approved July 29, 1943, as heretofore and hereafter amended;

D. Securities issued by and representing an interest in, or a direct obligation of, (1) any building and loan association incorporated under the laws of this State, (2) any Federal Savings and Loan Association, (3) any savings and loan association incorporated under the laws of any state if such association is a member or stockholder of the Federal Savings and Loan Insurance Corporation not including however securities which are permanent reserve stock issued or issuable pursuant to conversion thereof, or (4) any credit union approved and supervised by the Department of Financial Institutions;

E. Securities issued or guaranteed as to principal and interest or as to dividend by a railroad or public utility holding or operating corporation or person, including a public carrier of passengers or freight or both, provided that the issuance or guaranteeing of the securities is regulated or supervised, as the case may be, by a public commission or board of the United States (including in the term "public commission", without limiting the generality of the foregoing, the Securities and Exchange Commission acting under the Act of the Congress of the United States known as the Public Utility Holding Company Act of 1935) or of any territory or possession thereof, or of any state of the United States, or of the District of Columbia, or of the Dominion of Canada, or of any province thereof:

F. Equipment trust certificates in respect of equipment leased or conditionally sold to a person, if securities issued by such person would be exempt under subsection E of this Section;

G. Securities which at the time of sale are listed, and in which trading has occurred, on the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Pacific Coast Stock Exchange, Inc., the Midwest Stock Exchange, Inc., the Chicago Board of Trade, or the Chicago Board Options Exchange, Incorporated, pursuant to official authorization by such exchange or board of trade, and additional amounts of such securities when approved for listing upon official notice of the issuance thereof; and securities senior, both as to dividends or interest and upon liquidation, to securities so listed; and warrants and rights to purchase any of the foregoing; provided, however, that this subsection G shall not apply to investment fund shares or securities of like character, which are being continually offered at a price or prices determined in accordance with a prescribed formula;

H. Securities issued by a person organized and operated not for pecuniary profit and exclusively for religious, educational, benevolent, fraternal, agricultural, charitable, trade, social or reformatory purposes or for more than one of said purposes and no part of the net earnings of which inures to the benefit of any private stockholder or member;

I. Instruments evidencing indebtedness under an agreement for the acquisition of property under contract of conditional sale;

J. A note secured by a first mortgage upon tangible personal or real property when such mortgage is made, assigned, sold, transferred and delivered with such note or other written obligation secured by such mortgage, either to or for the benefit of the purchaser or lender; or bonds or notes not more than 10 in number secured by a first mortgage upon the title in fee simple to real property if the aggregate principal amount secured by such mortgage does not exceed \$50,000 and also does not exceed 75% of the fair market value of such real property;

K. A note or notes not more than 10 in number secured by a junior mortgage lien if the aggregate principal amount of the indebtedness represented thereby does not exceed 50% of the amount of the then outstanding prior lien indebtedness and provided that the total amount of the indebtedness (including the indebtedness represented by the subject junior mortgage note or notes), shall not exceed 90% of the fair market value of the property securing such indebtedness; and provided further that each such note or notes shall bear across the face thereof a legend in letters at least 12 point type or larger, as follows: "THIS NOTE IS SECURED BY A JUNIOR MORTGAGE";

L. Negotiable promissory notes and drafts, bills of exchange and bankers' acceptances which arise out of current transactions or the proceeds of which have been or are to be used for such current transactions, but only if such notes, drafts, bills or acceptances have a maturity at the time of issuance of not to exceed 9 months;

and any renewal or renewals, the maturity of each of which is similarly limited, of such notes, drafts, bills or acceptances;

M. Securities issued by and representing an interest in, or a direct obligation of, any insurance company organized under the laws of this State and subject to the jurisdiction of the Department of Insurance of this State, or securities issued by any insurance company having authority to do an insurance business in this State which has been continuously in operation for not less than 10 years;

N. Securities issued pursuant to employee security-purchase plans, if the securities which are the subject of the employee security-purchase plans would be exempt, pursuant to any other subsection of this Section, from registration under Section 5 of this Act, or, if the securities which are the subject of the employee security-purchase plans are registered under the provisions of Section 7 of this Act;

O. Securities issued by or pursuant to employee profit-sharing trusts or plans or employee pension trusts or plans.

EXEMPT TRANSACTIONS

Sec. 4. The provisions of Sections 5, 6 and 7 of this Act shall not apply to any of the following transactions, except where otherwise specified in this Section 4:

A. The sale in good faith, whether through a dealer or otherwise, of securities by a vendor who is not an issuer, underwriter, dealer or controlling person in respect of such securities, and who, being the bona fide owner of such securities, disposes thereof for his own account; provided, that such sale is not made directly or indirectly for the benefit of the issuer or of an underwriter or controlling person;

B. The sale, issuance or exchange by an issuer of its securities or the sale or exchange by a controlling person of securities of the issuer to or with security holders of the issuer except to or with persons who are security holders solely by reason of holding transferable warrants, transferable options, or similar transferable rights of the issuer, if no commission or other remuneration is paid or given directly or indirectly for or on account of the procuring or soliciting of such sale or exchange (other than a fee paid to underwriters based on their undertaking to purchase any securities not purchased by security holders in connection with such sale or exchange), or the issuance by an issuer of its securities to a holder of convertible securities pursuant to a conversion privilege granted at the time of issuance of such convertible securities, provided no commission or other remuneration is paid or given directly or indirectly for or on account of the procuring or soliciting of such conversion and no consideration from the holder in addition to the surrender or cancellation of the convertible security is required to effect the conversion;

C. The sale of securities, other than fractional undivided interests in oil, gas or other mineral lease, right or royalty, to any

corporation, bank, savings institution, trust company, insurance company, building and loan association, dealer, pension fund or pension trust, employees' profit sharing trust or to any association engaged as a substantial part of its business or operations in purchasing or holding securities, or to any trust in respect of which a bank or trust company is trustee or co-trustee;

D. The sale of fractional undivided interests in any oil, gas, or other mineral lease, right, or royalty to any bank, corporation, dealer, pension fund, pension trust, employees' profit sharing trust, or to any association or trader buying or selling fractional undivided interests in oil, gas or other mineral rights, in frequent operations, for its or his own account rather than for the account of customers, to such extent that it or he may be said to be engaged in such activities as a trade or business;

E. The sale of securities by an executor, administrator, guardian, conservator, receiver or trustee in insolvency or bankruptcy, or at any judicial sale, or at a public sale by auction held at an advertised time and place, or the sale of securities in good faith and not for the purpose of avoiding the provisions of this Act by a pledgee of securities pledged for a bona fide debt;

F. The sale by a registered dealer, either as principal or agent, of any securities (except face amount certificate contracts and investment fund shares) at a price reasonably related to the current market price of such securities, provided:

(1) The securities are issued and outstanding and the following information concerning the issuer of such securities is published in a recognized manual of securities:

(a) A balance sheet as of a date not more than 18 months prior to the date of the sale, and

(b) Income statements for a period of not less than 2 years next prior to the date of the balance sheet or for the period of existence of the issuer, if the period of existence be less than 2 years; or

(2) (a) Prior to the sale, an application for the authorization thereof has been filed by any registered dealer with and approved by the Secretary of State pursuant to such rules and regulations as the Secretary of State may prescribe.

(b) The Secretary of State shall have the power by order to refuse to approve any application filed pursuant to this clause (2) if

(i) the application does not comply with the provisions of this clause (2), or

(ii) there exist conditions affecting the soundness of the security so that the sale of such securities would be inequitable, or would work or tend to work a fraud or deceit, or

(iii) the issuer or the applicant have violated any of the provisions of this Act;

(c) Each application filed pursuant to this clause (2) shall be accompanied by a filing fee of \$200 which shall not be returnable in any event;

(d) There shall be submitted to the Secretary of State as soon as practicable following the end of the issuer's fiscal year, each year during the period of the authorization, one copy of the balance sheet of the issuer certified by an independent public accountant and one copy of a certified income statement as of the date of the aforementioned balance sheet, together with such current information concerning the securities and the issuer thereof as the Secretary of State may, in his discretion, prescribe by rule or regulation;

(e) Approval of an application filed pursuant to this clause (2) of subsection 4F shall expire 5 years after the date of the granting of the approval, unless said approval is sooner terminated by (1) suspension or revocation by the Secretary of State in the same manner as is provided for in subsections H, I and J of Section 11 of this Act, or (2) the applicant filing with the Secretary of State an affidavit evidencing either that (i) the subject securities have become exempt under Section 3 of this Act or (ii) the applicant no longer is capable of acting as the applicant and the reasons therefor or (iii) the applicant no longer desires to act as the applicant. In the event of the filing of an affidavit under either of the preceding subclauses (ii) or (iii) the Secretary of State may authorize a substitution of applicant upon the new applicant executing the application as originally filed. However, the aforementioned substituted execution shall have no effect upon the previously determined date of expiration of approval of the application. Notwithstanding the provisions of this paragraph (e) approvals granted under clause (2) of subsection 4F prior to the effective date of this Act shall be governed by the provisions of this Act in effect on such date of approval.

(f) No person shall be considered to have violated Section 5 of this Act by reason of any sale effected after a termination under the foregoing subclause (e) if official notice of such termination has not been circulated generally to dealers by the Secretary of State and if such person sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known, of the termination; or

(3) The securities are sold in transactions which are exempt pursuant to other subsections of this Section 4 (other than subsection B) and provided that in transactions pursuant to subsection A, E, M and N of this Section 4, the registered dealer acts as agent and not as principal; or

(4) The securities, or securities of the same class, are the subject of an existing registration under Section 5 of this Act.

The exemption provided in this subsection (F) shall apply only if the sale is made in good faith and not for the purpose of avoiding any of the provisions of this Act, and only if the sale is not made for the direct or indirect benefit of the issuer of the securities, or the controlling person in respect of such issuer (unless the sale is pursuant to subsection C, D, G, H, L, or M of Section 4);

G. The sale or sales of securities, other than fractional undivided interests in an oil, gas, or other mineral lease, right or royal-

ty, for the direct or indirect benefit of the issuer thereof, or of a controlling person, whether through a dealer (acting either as a principal or agent) or otherwise, within the 12 months preceding the point in time immediately after the last such sale or sales made in reliance on this subsection G (a) to not more than 35 persons in this State; or (b) if the aggregate selling price of the securities does not exceed \$50,000 provided that offers to sell such securities are not made to more than 70 persons in this State during such period of 12 months and that in determining such 35 persons or such 70 persons, as the case may be, there shall be excluded (i) purchasers or offerees of securities exempt under Section 3 hereof, (ii) purchasers or offerees of securities in transactions exempt under other subsections of this Section 4, and (iii) purchasers or offerees of securities which are part of an offering registered under Section 5 hereof; provided further that (1) no commission, discount or other remuneration exceeding 15% of the initial offering price of the securities is paid or given directly or indirectly for or on account of the sale; (2) the securities shall not be offered or sold by any means of general advertising or general solicitation; and (3) the issuer, controlling person or dealer shall file with the Secretary of State a report of sale not later than 30 days after the sale, setting forth the name and address of the issuer and of the controlling person, if the sale was for the direct or indirect benefit of such person, the total amount of the securities sold under this subsection G, the price at which the securities were sold, the commissions or discounts paid or given, the names and addresses of the purchasers, and a representation that offers to sell such securities were not made to persons in excess of the number permitted by this subsection. The exemption set out in this subsection G shall not be available for the sale of face amount certificate contracts or investment fund shares. The fee for filing the report of sale shall be \$10. (Such report of sale shall be deemed confidential and shall not be disclosed to the public except by order of court or in court proceedings.);

H. The sale or sales of fractional undivided interests in oil, gas, or other mineral lease, right or royalty for the direct or indirect benefit of the issuer thereof, or of a controlling person, whether through a dealer (acting either as principal or agent) or otherwise, within the 12 months preceding the point in time immediately after the last such sale or sales made in reliance on this subsection H:

- (a) to not more than 35 persons in this state, or
- (b) if the aggregate selling price of the securities does not exceed \$50,000 provided that offers to sell such securities are not made to more than 70 persons in this state during such period of 12 months and that in determining such 35 persons or such 70 persons, as the case may be, there shall be excluded:
 - (i) purchasers or offerees of securities exempt under Section 3 hereof; (ii) purchasers or offerees of securities in transactions exempt under other subsections of this Section 4; and (iii) purchasers or offerees of securities which are part of an offering registered under Section 5 hereof; provided further that (1) no commission, discount or other remuneration exceeding 15% of the initial offering price of the securities is paid or given directly or indirectly for or on account of the sale; (2) the securities shall not be offered or sold by any means of general advertising or general solicitation; and (3) the issuer, controlling person, or dealer shall file with the Secretary of State a report of sale not later than 30 days after the sale, setting forth the name and address of the issuer and of the controlling person, if the sale was for the direct or indirect benefit of such person, the total amount of the securities sold under this subsection H, the price at which the securities were sold, the commissions or discounts paid or given, the names and addresses of the purchasers, and a representation that offers to sell such securities were not made to persons in excess of the number permitted by this subsection. The fee for filing such report of sale shall be \$10. (Such report of sale shall be deemed confidential and shall not be disclosed to the public except by order of court or in court proceedings.);

I. Any issuance of securities to or for the benefit of stockholders incident to a vote by such stockholders pursuant to the articles of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of the same or another corporation;

J. Any issuance of securities incident to a reorganization, recapitalization, readjustment, or composition, as approved by a court of competent jurisdiction of the United States, or any state or territory thereof, or of the District of Columbia, in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash;

K. The sale or issuance of securities for patronage, or as patronage refunds, or in connection with marketing agreements by cooperative associations organized exclusively for agricultural, producer, marketing, purchasing, or consumer purposes; and the sale of subscriptions for or shares of stock of cooperative associations organized exclusively for agricultural, producer, marketing, purchasing, or consumer purposes, if no commission or other remuneration is paid or given directly or indirectly for or on account of such subscription, sale or resale, and if the aggregate amount of issued and outstanding capital stock and paid in surplus of such cooperative association does not exceed \$100,000, and if the aggregate amount of such stock of such cooperative association held by any one natural person does not exceed \$5,000;

L. Offers for sale or solicitations of offers to buy (but not the acceptance thereof), of securities which are the subject of a pending registration statement filed under the Federal Securities Act and:

(1) Which are the subject of a pending application for registration under the Illinois Securities Law of 1953, or

(2) The sale of which would be exempt under subsection B of Section 3 of this Act if registration under the Federal Securities Act were then in effect;

M. The sale of preorganization subscriptions for any securities prior to the incorporation, organization or formation of any issuer under the laws of the United States, or any state, territory or possession thereof, or of the District of Columbia, or the issuance by such issuer, after its incorporation, organization or formation, of securities pursuant to such preorganization subscriptions, if no commission or other remuneration is paid or given directly or indirectly for or on account of such sale or sales or issuance, and if the number of subscribers shall not exceed 25;

N. The execution of orders for purchase of securities by a registered dealer, provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase the securities, has no direct interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivers to the purchaser written confirmation of the order which clearly identifies the commissions paid to the registered dealer.

O. The sale or sales of securities, other than fractional undivided interests in an oil, gas or other mineral lease, right or royalty, for the direct or indirect benefit of the issuer thereof, or of a controlling person, whether through a dealer (acting either as principal or agent) or otherwise, if the securities sold, immediately following the sale or sales, together with securities already owned by the purchaser, would constitute 50% or more of the equity interest of any one issuer provided that the number of purchasers is not more than 5 and provided further that no commission, discount or other remuneration exceeding 15% of the aggregate sale price of the securities is paid or given directly or indirectly for or on account of the sale or sales;

REGISTRATION OF SECURITIES

Sec. 5. All securities except those exempt under Section 3 hereof, or those sold in transactions exempt under Section 4 hereof, or face amount certificate contracts required to be registered under Section 6 hereof, or investment fund shares required to be registered under Section 7 hereof, shall be registered prior to sale in this state either by Notification, or by Description, or by Qualification, as hereinafter is this Section provided:

A. Registration by Notification. (1) Securities which have been or are being registered under the Federal Securities Act, where the effective date of the registration is not more than 10 days prior to the filing with the Secretary of State provided for in this subsection (A), may be registered by Notification hereunder in the manner provided in this subsection (A) if they are securities of an issuer that owns or controls a property or business which has been in continuous operation not less than 5 years and which has had, for a period of not less than 36 nor more than 60 consecutive months ended not more than 5 months preceding the filing provided for in this subsection (A), average annual net earnings after all taxes and interest, but not deducting interest charges or dividends or both, as the case may be, upon securities to be retired, as follows:

(a) as to interest-bearing securities, not less than $1\frac{1}{2}$ times the annual interest charges thereon and an amount equal to the annual interest charges on all other interest-bearing securities to be outstanding;

(b) as to shares of stock having a specified dividend rate, not less than $1\frac{1}{2}$ times the annual dividend requirements thereon and on all other shares of stock to be outstanding and ranking equally or prior thereto as to dividends;

(c) as to shares of stock not having a specified dividend rate, not less than 5% of an amount determined by multiplying the total number of shares of such stock and of all other stock to be outstanding and ranking equally as to dividends, by the price per share or, if the price is not fixed but is to be determined by a method, the maximum price per share, at which the shares of stock to be registered are to be offered.

(2) The term "securities to be retired" shall mean (i) securities which will be discharged with the proceeds of the securities being

registered or a portion thereof provided that no reservation of a right to change the use of the proceeds is contained in the final prospectus as regards the securities to be retired and (ii) such other securities as the Secretary of State may determine by rule or regulation.

(3) Net earnings or losses of a property or business which the issuer of the securities being registered has owned or controlled for only a portion of the aforementioned consecutive period, or which such issuer is to acquire in whole or in part with the proceeds of the securities being registered or at the time of or prior to the issuance of such securities, shall be included for the whole of such consecutive period: Provided that, if the aggregate assets of the property or business owned or controlled for only a portion of such consecutive period, or so to be acquired, do not, as of the date of the most recent balance sheet included in the registration statement filed pursuant to this subsection A, exceed 15% of the total assets of the issuer of the securities being registered, then the net earnings or losses of such property or business may, but need not, be included for any period prior to the acquisition by the issuer of such property or business.

(4) Anything in this subsection A to the contrary notwithstanding, no securities may be registered by Notification hereunder if (a) the underwriter or underwriters thereof have received or are to receive, directly or indirectly, for or on account of the sale or distribution of such securities (i) aggregate commissions, remuneration or discounts exceeding 15% of the initial offering price of such securities to the public, or (ii) any warrants or options to purchase securities of the issuer, or (b) any finder's fee has been or will be paid to any person for or on account of services or activities in the negotiation of the proposed offering and sale of such securities.

(5) Securities may be registered by Notification by the filing with the Secretary of State by the issuer, by a controlling person or by a registered dealer of:

(a) Two copies of the prospectus descriptive of the securities in the form in which such prospectus shall have been initially filed under the Federal Securities Act, and 2 copies of all subsequent amendments and supplements thereof;

(b) Information supplementary to that contained in the prospectus filed pursuant to sub-paragraph (a) above to show that the earnings standards set forth in this subsection A are met;

(c) A consent to the service of process executed by the issuer or controlling person conforming to the requirements of Section 10 hereof, provided that such consent need not be submitted if (i) the applicant is a registered dealer and the securities are being sold in this state by a registered dealer or dealers as principal and not as agent, or (ii) the issuer or controlling person is a corporation organized or authorized to transact business under the laws of this state;

(d) A statement by the applicant if a natural person or by a general partner if the applicant be a partnership only, or by an

officer of the applicant, if a corporation, or in other cases by a credible person having knowledge of the facts, setting forth the title of the securities and the amount thereof to be offered in this state under this **subsection A**.

(6) If the Secretary of State determines that the application and documents submitted to him appear to meet the requirements of **subsection A** then the Secretary of State shall register the securities by notification not later than 24 hours after the receipt of the final prospectus (being the prospectus in effect on the effective date of a registration of the securities under the Federal Securities Act) or of advices pursuant to **subsection (7)** below, whichever is earlier. Such registration shall be evidenced by the Secretary of State by stamping the words "Registered by Notification" followed by the date on the statement filed pursuant to sub-paragraph (d) of Paragraph (5) above.

(7) If the prospectus referred to in sub-paragraph (a) of paragraph (5) above, is amended subsequent to filing hereunder, it may, by written or telegraphic advices to the Secretary of State, be amended to conform to the latest forms thereof filed under the Federal Securities Act, provided that a copy of such amendment be filed with the Secretary of State within 7 days after registration hereunder.

(8) If after securities are registered under this **subsection A** the prospectus descriptive thereof as theretofore filed hereunder is amended or supplemented under the Federal Securities Act, a copy of such amended or supplemented prospectus shall forthwith be submitted to the Secretary of State and shall thereafter be deemed to be the prospectus required by this **subsection A**.

B. Registration by Description. Securities which have been or are being registered under the Federal Securities Act may be registered by Description in the manner provided in this **subsection B**, if the effective date of the registration under the Federal Securities Act is not more than 30 days prior to the filing with the Secretary of State information provided for in this **subsection B** and securities which are the subject of a post-effective amendment of a registration statement under the Federal Securities Act (other than a post-effective amendment referred to in Section 2.13 of this Act) may be registered by Description in the manner provided in this **subsection B**, if the effective date of such post-effective amendment is not more than 30 days prior to the filing with the Secretary of State information provided for in this **subsection B**.

(1) An application for registration by Description shall be made by the issuer, by a controlling person or by a registered dealer. Such application shall be signed by the applicant and submitted to the Secretary of State. The application shall set forth:

- (a) The name and address of the issuer;
- (b) The title and total amount of the securities to be offered;
- (c) The amount of the securities to be offered in this state;
- (d) The price at which the securities are to be offered, or the

method by which such price is to be determined, provided that such price or method may be furnished by written or telegraphic advices to the Secretary of State subsequent to the filing of the application but prior to registration of the securities hereunder; and

(e) The aggregate underwriting commissions, remuneration or discount.

(2) There shall be submitted with the application:

(a) One copy of the registration statement incorporating the prospectus filed under the Federal Securities Act, including all amendments thereto and a schedule of exhibits, together with such exhibits as the Secretary of State may specify by rule or regulation;

(b) If the issuer is a corporation, a copy of its charter or articles of incorporation as then in effect, unless then on file with the Secretary of State; if other than a corporation, a copy of all instruments, if any, by which the issuer was created and all amendments thereto;

(c) A copy of the by-laws, or other code of regulations, if any, of the issuer;

(d) A copy of the indenture or other instrument, if any, under which the securities are to be or have been issued;

(e) A specimen copy of the securities or a copy of the form of the instrument to evidence the securities;

(f) An opinion of counsel as to the validity of the securities;

(g) A copy of the underwriting and selling agreements, if any;

(h) An examination fee of \$100, which shall not be returnable in any event;

(i) A consent to service of process executed by the issuer or controlling person conforming to the requirements of Section 10 hereof, provided that such consent need not be submitted if (i) the applicant is a registered dealer and the securities are being sold in this state by a registered dealer or dealers as principal and not as agent, or (ii) the issuer or controlling person is a corporation organized or authorized to transact business under the laws of this state.

(3) Anything in this sub-section B to the contrary notwithstanding, no securities may be registered by Description hereunder if the underwriter or underwriters thereof have received or are to receive, directly or indirectly, for or on account of the sale or distribution of such securities aggregate commissions, remuneration or discounts exceeding 15% of the initial offering price of such securities to the public.

(4) If the prospectus referred to in sub-paragraph (a) of paragraph (2) above, is amended subsequent to filing hereunder, it may, by written or telegraphic advices to the Secretary of State, be amended to conform to the latest forms thereof filed under the Federal Securities Act, provided that a copy of such amended prospectus be filed with the Secretary of State within (7) days after registration hereunder.

(5) The Secretary of State shall within a reasonable time examine the application and documents submitted to him and unless

the Secretary of State makes a determination that the application and documents submitted to him do not conform to the requirements of this subsection B or the sale of the securities is inequitable or would work or tend to work a fraud or deceit upon purchasers thereof, he shall upon receipt of the registration fee prescribed in subsection D of this Section 5, register the securities by stamping on the application the words "Registered by Description" followed by the date.

(6) If after securities are registered under this sub-section B the prospectus descriptive thereof as theretofore filed hereunder is amended or supplemented under the Federal Securities Act, a copy of such amended or supplemented prospectus shall forthwith be submitted to the Secretary of State, and shall thereafter be deemed to be the prospectus required by this subsection B.

C. Registration by Qualification. Securities may be registered by Qualification in the manner provided in this subsection C.

(1) An application for registration by Qualification shall be made by the issuer, by a controlling person or by a registered dealer. Such application shall be signed by the applicant and shall contain the same information and, except for the items listed in subparagraph (a) of paragraph (2) of subsection B of this Section 5, be accompanied by the same documents, material and examination fee as is provided in case of registration by Description under said subsection B. In addition, there shall be submitted with the application such additional information and material in such form as the Secretary of State may by rule or regulation prescribe and a prospectus containing the following:

(a) The date and form of organization of the issuer;

(b) A brief description of the business done and intended to be done by the issuer and by its subsidiaries and the general development of such business during the past 5 years or such shorter period as the issuer and such subsidiaries may have been in existence;

(c) The location and general character of the physical properties of the issuer and of its subsidiaries;

(d) The authorized and issued capitalization of the issuer and a description of the securities being registered and of all authorized securities;

(e) The proposed method of sale of the securities, the price thereof to the public or the method by which such price is to be computed, and the underwriting and selling discounts and commissions;

(f) The intended use by the issuer of the proceeds of the securities;

(g) The names and addresses of all of the issuer's officers and directors, or persons performing similar functions, their business experience during the preceding 5 years and the remuneration paid to each by the issuer and its subsidiaries during the fiscal year last past and proposed to be paid for the then current fiscal year;

(h) The names and addresses of all persons owning of record, and of all persons owning beneficially, to the extent known to the applicant, 10% or more of any class of equity securities of the issuer, and the percentage owned by each;

(i) A brief description of material pending or threatened legal proceedings involving the issuer or its subsidiaries;

(j) The following financial statements of the issuer:

(i) A balance sheet as of date within 120 days prior to the date of submitting the application. If such balance sheet is not certified by an independent public accountant, the prospectus shall also contain a balance sheet certified by an independent public accountant as of the close of the issuer's last fiscal year, unless such fiscal year ended within 120 days prior to the time of submitting the application, in which case the certified balance sheet may be as of the end of the preceding fiscal year, (ii) An income statement for each of the issuer's 3 fiscal years (or for the period of existence of the issuer if less than 3 years) next preceding the date of the certified balance sheet and for the period, if any, between the date of the certified balance sheet and the date of the most recent balance sheet. Such statement shall be certified by an independent public accountant for the periods ending with the date of the certified balance sheet. (iii) An analysis of each surplus account of the issuer for each period for which an income statement is filed, certified by an independent public accountant for the periods for which certified income statements are submitted. (iv) An analysis (which need not be certified to by independent public accountants and which may be in narrative form if desired by the applicant) of all surplus accounts of the issuer for a period beginning on a date not less than 8 years prior to the date of the certified balance sheet required by the above subdivision (i), or from the date of the organization of the issuer, whichever is later, and ending on the day before the first day of the earliest period covered by the analysis of surplus accounts furnished pursuant to the above sub-division (iii);

(k) If the issuer owns at least 50% of the voting stock of one or more subsidiaries, there shall also be included in the prospectus either (i) like financial statements for each subsidiary, or (ii) like consolidated financial statements for the issuer and its subsidiaries;

(1) Any additional information the Secretary of State may by rule or regulation prescribe.

(2) If the securities being registered under this subsection are certificates of deposit, voting trust certificates, collateral-trust certificates, certificates of interest, fractional interests in oil, gas or other mineral rights of unincorporated issuers or like securities, the prospectus may omit such of the foregoing items (a) to (k) but shall include such pertinent information, as the Secretary of State may by rule or regulation prescribe; such prospectus shall contain a description of the properties and businesses from which such certificates, shares or interests derive value.

(3) Anything in this **subsection C** to the contrary notwithstanding, no securities may be registered by qualification hereunder if the underwriter or underwriters thereof have received or are to receive, directly or indirectly, for or on account of the sale or distribution of such securities aggregate commissions, remuneration or discounts exceeding 15% of the initial offering price of such securities to the public.

(4) The Secretary of State shall within a reasonable time examine the application and documents submitted to him, and unless he makes a determination that the application and documents submitted to him do not conform to the requirements of this **subsection C** or the sale of the securities is inequitable or would work or tend to work a fraud or deceit upon purchasers thereof, he shall upon receipt of the registration fee prescribed in **subsection D** of this Section 5, register the securities by stamping on the application the words "Registered by Qualification" followed by the date. If the securities registered shall not have been sold and distributed at the expiration of a period of 6 months following the date of registration, the Secretary of State may, in his discretion, require the submission of such current information concerning the securities and the issuer thereof as he may by rule or regulation prescribe.

(5) If after securities are registered under this **subsection C** the prospectus descriptive thereof as theretofore filed hereunder is amended or supplemented, a copy of such amended or supplemented prospectus shall forthwith be submitted to the Secretary of State, and shall thereafter be deemed to be the prospectus required by this **subsection C**.

D. Registration Fee. No securities may be registered under Section 5 unless prior thereto a registration fee has been paid. The registration fee payable under the provisions of **subsection A, B, and C** of this Section 5 shall be one-twentieth of one percent of the aggregate price at which the amount of the securities registered for sale in this state are to be offered for sale, but in no case shall the fee be less than \$100 or more than \$1000, and in no case shall such fee be returnable.

E. A registration effected under Section 5 of this Act shall continue effective for a period of 12 months from the date of registration unless sooner terminated by (1) suspension or revocation by the Secretary of State; or (2) the applicant filing with the Secretary of State an affidavit evidencing either that (a) the securities have been fully sold and distributed to the public or (b) that it is no longer desired to offer such securities in this state or (c) that such securities have become exempt under Section 3 of this Act.

FACE-AMOUNT CERTIFICATE CONTRACTS

Sec. 6. Face-amount Certificate Contracts shall be registered as provided in this section before being offered or sold in this State.

A. An application for registration under this Section 6 shall be filed with the Secretary of State by the issuer, in the form prescribed by the Secretary of State, which shall incorporate therein, not less than the following data, information and exhibits:

(1) A specimen copy of the prospectus proposed to be distributed in the offering and sale, which prospectus shall set forth information as to the organization of the issuer; the corporate history thereof, if a corporation, or like information if of another form of organization; names of principal officers and directors or persons performing similar functions, a complete description of the terms and conditions of each and every series, type or class of contract being issued or proposed to be offered in Illinois or elsewhere, which description shall include appropriate tables of initial or periodic installment payments required of the purchaser; surrender or liquidation values, maturity values, optional plans of extended contract periods and schedules of annuity payments which may be elected by a contract holder, and present such financial statements in respect of the issuer as of a date not more than 13 months prior to the date of such prospectus, including operating statements for not less than 3 years last prior to the date of the balance sheet presented by the prospectus, or from date of inception if the issuer has not been in existence for a period of 3 years;

(2) A copy of each registration statement then in effect relative to the face amount certificate contracts for which application for registration under this Act is being made, as filed or being filed under the Federal Securities Act and the Investment Company Act of 1940, including all amendments to such registration statements and a schedule of all exhibits submitted therewith, together with copies of such submitted exhibits as the Secretary of State may generally or specifically require;

(3) Specimen copies of each and every series, type or class of face amount certificate contract proposed to be offered in Illinois, and specimen copies of each and every form of face amount certificate contract or other security being issued or proposed to be offered and issued elsewhere;

(4) If the issuer is a corporation, a copy of its charter or articles of incorporation and all amendments thereto, unless then on file with the Secretary of State; or if other than a corporation, a copy of all instruments, if any, by which the issuer was created, and all amendments thereto;

(5) A copy of the by-laws or other code of regulations, if any, of the issuer;

(6) Such financial statements in respect of the issuer as the Secretary of State may by rule or regulation prescribe, including but not by way of limitation, (i) a balance sheet of a date within 120 days prior to the date application for registration is received by the Secretary of State, which balance sheet, if not certified by an independent certified public accountant, shall be accompanied by a so certified balance sheet of the issuer as of the close of the

last prior fiscal year; (ii) a detailed statement of income and expenses, including income from investments, service fees, loading and other sources, operating expenses and provisions for contract reserves or any additional credits to contract liabilities, profits realized and losses sustained in transactions in investments, and all other charges to operations, for a period of not less than 3 fiscal years (or for the period of existence of the issuer if less than 3 years) last preceding the balance sheet presented under item (i) above, which statement of income and expenses, if not certified by an independent certified public accountant, shall be accompanied by a so certified statement of income and expenses for a period of 3 years last preceding the uncertified period or periods presented as and for this item (ii); and (iii). A detailed analysis of each surplus and reserve account for the same period or periods covered by item (ii), with like requirement for independent certification. (iv) Such other financial data as the Secretary of State may reasonably require in any specific case or by a rule or rules of general application.

(7) A consent to service of process executed by the issuer conforming to the requirements of Section 10 of this Act, provided that the consent need not be submitted if the issuer is a corporation or organized or authorized to transact business under the laws of this State.

(8) An examination fee in the amount of \$100 which shall not be returnable in any event.

B. The Secretary of State shall within a reasonable time examine the application and related documents submitted to him, and if such application and related documents conform to the requirements of this Section, and unless the Secretary of State makes a determination that the sale of such face amount certificate contracts would be inequitable, or would work or tend to work a fraud or deceit upon the purchasers thereof, he shall, upon receipt of the deposit required by subsection F of this Section 6 and upon receipt of the registration fee as hereinafter prescribed, register the face amount certificate contracts, as described by series, type or class within the application by stamping on the face of the application the words "Registered Under Section 6 of The Illinois Securities Law of 1953".

The fee for registration of face amount certificate contracts shall be \$300 plus \$25 for each series, type or class of contract being registered: provided, however, that variations or options providing for insurance or self-completion, provisions for optional settlements, or rights of acceleration of payments contracted by holders, shall not be deemed to be or create separate or additional series, types or classes.

C. A registration under this Section 6, unless sooner terminated by the voluntary action of the Issuer, or by suspension or revocation by the Secretary of State, shall continue in force and effect for a period of one year from the date established, and shall permit the sale of face amount certificate contracts so registered without limitation as to number or aggregate amount during such period of registration: provided, however, that the issuer shall promptly file with the Secretary of State, throughout such registration year, (i) 2 specimen copies of each monthly, quarterly, semi-annual or other periodic or special report and of each financial state-

ment distributed to contract holders; (ii) 2 appropriately certified copies of all statements and reports filed with any regulatory authority or agency of the Federal Government which relate to the issuer and the issuance of the subject securities and (iii) 2 copies of each independently certified audit report pertaining to the financial affairs and position of the issuer covering issuer's fiscal year ending during the registration year, to be supplied to the Secretary of State as soon as available after the close of the issuer's fiscal year.

D. A registration of face amount certificate contracts, under this Section 6, may be amended by the issuer at any time, and from time to time, upon application to and consent by the Secretary of State, for the purpose of disclosing proposed changes in matters of organization, policies of management or in method of offering and sale which will constitute substantial modification of or variations from representations and disclosures theretofore made to the Secretary of State, or for the purpose of making application for registration of any additional series, type or class of contracts.

An application for amendment shall be in the form prescribed by the Secretary of State and when submitted shall be accompanied by an examination fee in the amount of \$10 which is not returnable in any event, and if the application for amendment undertakes registration of any additional series, type or class of contracts, shall be accompanied by a registration fee in the amount of \$25 for each such additional series, type or class of contract proposed to be registered, which registration fee is to be returnable to the applicant issuer in an appropriate amount in the event registration of an additional series, type or class of contract is denied.

E. No face amount certificate contract shall be registered under this Act unless the issuer shall establish and maintain with the Secretary of State, for the benefit of the holders of such contracts residing in this State, a deposit of securities representing debt obligations of the kind in which life insurance companies organized under the laws of this State are permitted to invest their funds, in an amount having a fair market value of not less than \$100,000 and at no time less than the current contract liability on all such face amount certificate contracts held by persons residing in Illinois, and provided further that deposited securities, other than those secured by entire first mortgage or trust deeds on improved unencumbered real estate, are listed and described in recognized manuals or appear in current quotations in transactions on exchanges recognized by subsection G of Section 3 of this Act, and provided further, that bonds or notes secured by mortgages or trust deeds be limited to those (i) constituting the entire indebtedness secured thereby, (ii) establishing a first lien on improved real estate held in fee simple, and (iii) are insured by the Federal Housing Administrator under an Act of Congress of the United States entitled "National Housing Act". Debentures issued by the Federal Housing Administrator under an Act of Congress of the United States entitled the "National Housing Act" may be included in the deposit prescribed by this subsection in amounts related to, and in substitution for specific

insured mortgage loans then included in the subject deposit which are in default but at no time shall the aggregate principal amount of such debentures included in the subject deposit exceed 5% of the fair market value of securities comprising the subject deposit. The current contract liability in respect of contracts held by persons residing in Illinois shall be that as determined in such contracts as computed by the issuer and regularly certified to the Secretary of State, on or before the last day of each calendar month as of the close of the month last prior to the date of reporting.

Securities deposited as hereinabove required may be withdrawn by the depositor at any time, and from time to time whenever other securities eligible for deposit and of a fair market value not less than that withdrawn are deposited in substitution for securities withdrawn.

The Secretary of State may, upon receipt of appropriate certification in writing, deemed by him to be competent and adequate, evidencing the reduction of contract liability on contracts held by persons residing in Illinois to an aggregate amount representing not more than 90% of the fair market value of the securities then on deposit, permit an equivalent reduction in the deposited securities.

F. The initial and continuing deposit required hereby shall, so long as the registered contracts are being offered and sold in Illinois, and until all contract liability on all contracts outstanding in Illinois has been discharged, include obligations of the United States or the State of Illinois in bearer form or fully registered, or registered as to principal, in the title of Treasurer of the State of Illinois, and his successors in office, in the minimum principal amount of \$50,000. An issuer of face amount certificate contracts, in respect of which a deposit is required to be established and maintained under this Section 6, and an issuer of face amount certificate contracts heretofore qualified for issuance to persons residing in Illinois under "An Act relating to the sale or other disposition of securities and providing penalties for the violation thereof and to repeal Acts in conflict therewith", approved June 10, 1919, as amended, and in respect of which a deposit of securities was established and has been maintained under the Act approved June 10, 1919, as cited above, shall pay to the Secretary of State an annual fee determined at the rate of one-thirtieth of one percent on the average of quarterly computations on the aggregate of principal amounts of market-quoted or listed securities and the original loan amounts of real estate loans insured by the Federal Housing Administrator and, in addition each such issuer shall pay to the Secretary of State, against quarterly billings therefor, a transaction charge of \$1 for each separate issue or loan included in additions to and withdrawals from such deposits, provided however, that the transaction charge of \$1 for each separate issue of market-quoted or listed securities shall apply to all the items of that issue included in a single transaction, regardless of the aggregate principal amount, and in respect of real estate loans such transaction charge shall apply to the group

of documents pertaining to each separate loan, and not to the separate items and documents included in such group.

Nothing herein contained in respect of prescribed custody of deposited securities with the State Treasurer and of permissible procedures of liquidation of deposited securities by the Secretary of State in the event of insolvency of an issuer of investment [face amount certificate] contracts, or the appointment of a trustee in bankruptcy, shall preclude the surrender of deposited securities to a duly qualified trustee under appointment by a Court having jurisdiction under the Federal Bankruptcy Act under an appropriate order of such Court.

G. Upon the insolvency of the issuer of face amount certificate contracts or appointment of a receiver or trustee in bankruptcy, the Secretary of State, if not required otherwise under Federal Law or under an order of a Federal Court of competent jurisdiction, may apply to the Circuit Court of Sangamon County, or any other court of competent jurisdiction, for authority to proceed for the liquidation of such securities held for the benefit of the holders of such contracts who reside in Illinois. The Secretary of State is hereby authorized to deal with such securities on deposit in this State for the benefit of the holders of such face amount certificate contracts, in his name, or, if the Court shall so order, in the name of the issuer. The Secretary of State may, subject to the approval of the Court, sell or otherwise dispose of the securities so deposited or any part thereof. He shall as soon as may be conveniently possible, give notice by publication as provided by law, and as the Court may direct, to all contract holders residing in Illinois who may have claims against the issuer under such face amount certificate contracts and for whose benefit such deposit is held, to file and prove their claims in the manner and within the time the Court shall direct. In order to preserve so far as possible the rights and interests of the holders of outstanding contracts of such issuer, who reside in Illinois, he may liquidate such securities on deposit in this State by entering into contracts with any issuer or person able to buy such securities in whole, or in part. Upon receiving an offer or offers for the purchase of such securities in whole, or in part, the Secretary of State shall submit such offer or offers to the court, and if, after a full hearing upon the petition filed by the Secretary of State, the court shall find that the Secretary of State endeavored to obtain the best contract price for the benefit of said contract holders, and if the court shall find that the best contract price in the interests of said contract holders has been obtained, and that it is for the best interests of said holders of such contracts that such securities be sold, the court shall, by written order approve the acts of the Secretary of State and authorize him to dispose of such securities. Upon the conversion of such securities to cash, the Secretary of State may then proceed to dispose of the sum received for such securities among the respective holders of such contracts as their interest may appear. Upon the liquidation and distribution of such funds, the Secretary of State may make proper liquidation of such

securities and the distribution or disposition thereof or of the proceeds therefrom as herein provided.

For the purpose of liquidation of such securities, the Secretary of State shall have the power to appoint one or more special deputies as his agent or agents and to employ such clerks, assistants, attorneys, or solicitors, as may by him be deemed necessary and to give each of such persons such power to assist him as he may consider wise. The compensation of every such special deputy, agent, clerk, assistant, attorney or solicitor shall be fixed, and all expenses of taking possession of such securities of the issuer and the administration thereof shall be approved, by the Secretary of State subject to the approval of the court and shall be paid out of the funds or assets received from the liquidation of such securities. If the face amount certificate contracts proposed to be registered under this Act are defined by the issuer as "Face Amount Certificates", and if the issuer thereof, is qualified as a registered investment company under the Investment Company Act of 1940 and maintains, under rules and regulations of the Federal Securities and Exchange Commission, a deposit of securities with a qualified institution or institutions, which deposit would be applicable to all contract liability established and accruing on such "Face Amount Certificates" outstanding with persons residing in Illinois, the Secretary of State may, in his sole discretion, and by specific rule in respect of each such registration under this Section 6, recognize such deposit established and maintained under rules and regulations of the Federal Securities and Exchange Commission in lieu of, and in substitution for, any deposit otherwise required to be established and maintained with the Secretary of State under this Section 6, excepting only the minimum deposit of \$50,000 as prescribed under this Section 6.

INVESTMENT FUND SHARES

Sec. 7. Investment fund shares shall be registered as provided in this Section before being sold in this state.

A. An application for registration under this Section 7 in such form as the Secretary of State shall by rule or regulation prescribe shall be submitted by the issuer to the Secretary of State and shall set forth therein or incorporate as exhibits thereto:

- (1) the name of the investment fund shares;
- (2) the names and addresses of the persons creating or sponsoring the investment fund shares;
- (3) a copy of each prospectus and registration statement then in effect relative to the investment fund shares being registered, as filed or being filed under the Federal Securities Act and the Investment Company Act of 1940, including all amendments to such registration statements and a schedule of exhibits, including such exhibits as the Secretary of State may require by rule or regulation;
- (4) a specimen copy of the investment fund shares or a copy of the form of the instrument to evidence the investment fund shares;

(5) if the issuer is a corporation, a copy of its charter or articles of incorporation and all amendments thereto, unless then on file in the office of the Secretary of State; or, if other than a corporation, a copy of all instruments, if any by which the investment trust or fund was created and all amendments thereto;

(6) a copy of the by-laws or other code of regulations, if any, of the issuer;

(7) a schedule of all types of deductions which may be made from the trust or corporate or fund assets and the income therefrom or the avails thereof as charges prior to distributions to holders of the investment fund shares;

(8) a statement of the plan of operation, management policies and provisions and restrictions in respect of investment and reinvestment of principal funds and undistributed income therefrom;

(9) a statement of the plan and intention on respect of distributions of ordinary income and capital gains, which statement shall disclose the taking of adequate measures for specific separation and identification of distributions arising from ordinary income and those arising from profits realized from the disposition of securities;

(10) specimen computations illustrating typical applications of the formulae to be used in determining asset value, offering price and liquidating price of the investment fund shares;

(11) such financial statements as the Secretary of State may by rule or regulation prescribe in respect of the issuer if the investment fund shares represent shares of an issuing corporation, or in respect of the trust fund, if the investment fund shares represent beneficial interests in a trust fund, including, but not by way of limitation:

(a) a balance sheet as of a date within 120 days prior to the date of submitting the application. If such balance sheet is not certified by an independent public accountant, it shall be accompanied by a balance sheet certified by an independent public accountant as of the close of the fund's last fiscal year, unless such fiscal year ended within 120 days prior to the time of submitting the application, in which case the certified balance sheet may be as of the end of the preceding fiscal year;

(b) a detailed statement of income and expenses and of profits realized and losses sustained from the sale of securities for each of the three fiscal years (or for the period of existence of the issuer if less than 3 years) next preceding the date of the certified balance sheet and for the period, if any, between the date of the certified balance sheet and the date of the most recent balance sheet. Such statement shall be certified by an independent public accountant for the periods ending with the date of the certified balance sheet;

(c) an analysis of each surplus account (or, in lieu thereof, a statement of changes in net assets) for each period for which a statement of income and expenses is filed, certified by an independent public accountant for the periods for which certified statements of income and expenses are submitted;

(d) such other financial statements and supporting schedules as the Secretary of State may by rule or regulation prescribe:

(12) such other material facts and additional documentary exhibits as the Secretary of State may by rule or regulation prescribe;

(13) a consent to service of process executed by the issuer or controlling person conforming to the requirements of Section 10 hereof, provided that such consent need not be submitted if (i) the applicant is a registered dealer and the securities are being sold in this state by a registered dealer or dealers as a principal and not as an agent, or (ii) the issuer or controlling person is a corporation organized or authorized to transact business under the laws of this state.

B. Each application shall be accompanied by an examination fee of \$100, which shall not be returnable in any event.

C. The Secretary of State, in his discretion, may make or cause to be made an examination of matters pertaining to the investment fund shares and the persons creating, sponsoring or having general charge of the distribution of the investment fund shares, or any of them, and may require the applicant to advance sufficient funds to defray all actual expenses of such examination. An itemized statement of such expenses shall be furnished to the applicant.

D. No investment fund shares shall be registered (1) unless the underlying securities or cash are and are to be deposited and held under an appropriate agreement for the benefit of the holders of the investment fund shares with and by a trustee or custodian which is a bank or trust company having an aggregate capital, surplus and undivided profits of at least \$2,000,000, or a clearing corporation, and (2) unless the formula for determining the offering price is such that at the time of sale the market value, determined as hereinafter provided, of unpledged underlying securities and other assets, after deduction of all accrued liabilities and established reserve accounts, is at least 90% of such price. Market value, for the purposes of this Section, shall mean the value, at the time of determination, ascertained as prescribed by the plan of operation set forth in the application and in accordance with a prescribed method of computation, consistently applied, deemed by the trustees or directors (or persons performing similar functions) of the issuer to be, and approved by the Secretary of State as being, the most accurate practical means of ascertaining realizable values as of such time of determination.

E. The Secretary of State shall within a reasonable time examine the application and documents submitted to him and may make such additional examination pursuant to subsection C of this Section as he may deem appropriate, and unless he makes a determination that the application and documents submitted to him do not conform to the requirements of this Section or the sale of the investment fund shares would be inequitable or would work or tend to work a fraud or deceit upon purchasers thereof, he shall register

the investment fund shares by stamping on the application the words "Registered under Section 7 of the Illinois Securities Law of 1953" followed by the date, but only upon receipt of a registration fee of \$500 for the securities to which the application pertains.

F. Unless and until the registration of investment fund shares is suspended or terminated, the application for such registration may be amended by the applicant at any time, and from time to time, by the payment of an examination fee of \$25 which shall not be returnable in any event, and the submission to the Secretary of State of an appropriate amendatory statement, in such form and of such content as the Secretary of State may by rule or regulation prescribe, (1) for the purpose of registering an additional class or classes of shares of the same rank, general description and characteristics as the class or classes previously registered and proposed to be offered under like terms, procedures and conditions, or (2) for the purpose of disclosing proposed changes which represent substantial variations from statements and disclosures made in the application for registration as then on file in matters of organization, plan of operation, management policies, provisions and restrictions in respect of investment and reinvestment of principal funds and undistributed income or plan of offering and sale of registered shares or interests. If the Secretary of State shall approve such amendatory statement for filing, he shall stamp on the amendatory statement the words "Registered under Section 7 of The Illinois Securities Law of 1953" followed by the date.

G. An amendatory statement or statements may be submitted by the applicant at any time, and from time to time, when it is desired to discontinue registration in respect of one or more registered classes of shares and if the Secretary of State shall find that such discontinuance is not prejudicial to existing rights and equities or against public interest, such amendatory statement or statements shall be filed by the Secretary of State without charge, but such discontinuance of registration shall not entitle the applicant to any refund of any fees previously paid in respect of such discontinued class or classes.

H. A registration of investment fund shares, unless sooner terminated by the voluntary action of the applicant or by action of the Secretary of State under Section 11 hereof, shall continue in force and effect for a period of one year from the date of registration, without limitation as to number of shares or aggregate amount; provided, however, that the issuer shall promptly file with the Secretary of State throughout such registration period, 2

copies of each monthly, quarterly, semi-annual, annual or other periodic report and financial statement sent to holders of its outstanding investment fund shares, and 2 true copies of each statement and report relating to such investment fund shares filed with any regulatory authority or agency of the Federal Government.

1. A registration of investment fund shares hereunder may be renewed by the applicant by filing with the Secretary of State not earlier than 30 days and not later than 5 days prior to the date upon which such registration or renewed registration would otherwise expire, an appropriate application in such form and of such content as the Secretary of State may by rule or regulation prescribe, accompanied by an examination fee of \$25 , which shall not be returnable in any event. If and when such renewal application shall have been approved by the Secretary of State for registration, such registration shall be renewed upon payment to him of a renewal fee of \$500 for the securities to which the application pertains.

REGISTRATION OF DEALERS, SALESPERSONS AND INVESTMENT ADVISERS

Sec. 8. A. Every dealer, salesperson and investment adviser shall be registered as such with the Secretary of State; provided that neither an issuer when engaged in the sale of securities issued by it, nor a controlling person when engaged in the sale of securities in respect of which it is a controlling person, nor any person when selling or issuing securities in transactions enumerated in ~~subsections~~ A, B, C, D, E, G, H, I, J, K, M or O of Section 4 hereof, shall be required to register as a dealer or salesperson under this Act.

B. An application for registration as a dealer, duly verified by oath, shall be filed in the office of the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, setting forth or accompanied by:

(1) the name and address of the applicant, location of its or his principal and all other offices, and the date of organization;

(2) the nature and place or places of business of the applicant for period of 10 years next preceding the date of application, or for the period of existence if less than 10 years and if the applicant be a corporation;

(3) a statement of any other Federal, state or territorial licenses or registration which have been granted the applicant and whether any such licenses or registrations have ever been refused, cancelled, suspended or withdrawn;

(4) the assets and all liabilities, including contingent liabilities of the applicant, as of a date not more than 60 days prior to the filing of the application;

(5) a brief description of any civil or criminal proceeding of which fraud is an essential element pending against the applicant

and whether the applicant has ever been convicted of a felony, or of any misdemeanor of which fraud is an essential element;

(6) if the applicant is a corporation: a copy of its articles of incorporation and amendments thereto, unless they are already on file in the office of the Secretary of State; a list of its officers and directors setting forth the residence and business address of each; a ten-year occupational statement of each; and a statement describing briefly any civil or criminal proceedings of which fraud is an essential element pending against each and the facts concerning any conviction of any officer or director of a felony, or of any misdemeanor of which fraud is an essential element;

(7) if the applicant is a sole proprietorship, a partnership, an unincorporated association or any similar form of business organization: the name, residence and business address of the proprietor or of each partner, member, officer, director, trustee or manager; the limitations, if any, of the liability of each such individual; a ten-year occupational statement of each such individual; a statement describing briefly any civil or criminal proceedings of which fraud is an essential element pending against each such individual and the facts concerning any conviction of each such individual of a felony, or of any misdemeanor of which fraud is an essential element;

(8) additional information which the Secretary of State may by rule or regulation prescribe as necessary to determine the applicant's financial responsibility, business repute and qualification to act as a dealer.

The Secretary of State shall provide and conduct an examination, to be known as the Securities Dealer Examination, which may be written or oral, or both, for the purpose of determining whether an applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered dealer. Officers, directors, partners, members, trustees or managers of an applicant which is other than a sole proprietorship, who participate in or are responsible for the sale of securities in Illinois, shall pass the Securities Dealer Examination in behalf of the applicant. Any dealer who is registered on September 30, 1963 and has continued to be so registered; and any officer, director, partner, member, trustee or manager of any registered dealer, who was acting in such capacity on and continuously since September 30, 1963; and any individual who has previously passed the Securities Dealer Examination or an examination designated by the Secretary of State to be the equivalent thereof by rule or regulation; shall not be required to pass the Securities Dealer Examination in order to continue to act in such capacity.

The application for the registration of a dealer shall be accompanied by: (a) a filing fee of \$100 which shall not be returnable in any event; (b) an examination fee of \$25 per individual examined, which shall not be returnable after the individual is enrolled for the examination, and (c) a consent to service of process conforming to the requirements of Section 10 of the Act, provided that

such consent need not be submitted if the applicant is a corporation organized or authorized to transact business under the laws of this State.

Any change which renders no longer accurate any information contained in any application for registration or re-registration of a dealer shall be reported to the Secretary of State within 10 business days after the occurrence of such change; provided that in respect to assets and liabilities only materially adverse changes need be reported.

C. Any registered dealer, issuer, or controlling person desiring to register a salesperson shall file an application in the office of the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, verified by oath of the salesperson, showing:

(1) the name, residence and business address of the salesperson;

(2) whether any Federal, state or territorial license or registration as a dealer or salesperson has ever been refused the salesperson, cancelled, suspended or withdrawn;

(3) the nature of employment and names and addresses of employers of the salesperson for the period of 10 years immediately preceding the date

(4) a brief description of any civil or criminal proceedings of which fraud is an essential element pending against the salesperson, and whether the salesperson has ever been convicted of a felony, or of any misdemeanor of which fraud is an essential element;

(5) additional information which the Secretary of State may by rule or regulation prescribe as necessary to determine the salesperson's business repute and qualification to act as a salesperson;

(6) a statement that the salesperson is in the employ of, appointed or authorized by, or about to be employed, appointed or authorized by the applicant.

The Secretary of State shall provide and conduct an examination, to be known as the Securities Salesperson Examination, which may be written or oral, or both, for the purpose of determining whether an applicant has sufficient knowledge of the securities business and laws relating thereto to act as a registered salesperson. Any salesperson who was registered prior to September 30, 1963 and has

continued to be so registered; and any individual who has within 5 years immediately preceding the application, passed the Securities Salesman Examination or an examination designated by the Secretary of State to be the equivalent thereof by rule or regulation or order; shall not be required to pass the Securities Salesperson Examination in order to continue to act as a salesperson.

The application for registration of a salesperson shall be accompanied by a filing fee of \$20, which shall not be returnable in any event, and an examination fee of \$15, which shall not be returnable after the salesperson is enrolled for the examination. Any change which renders no longer accurate any information contained in the application for registration as a salesperson shall be reported to the Secretary of State within 10 business days after the occurrence of such change. If the activities are terminated which rendered an individual a salesperson for the dealer, issuer or controlling person, the dealer, issuer or controlling person shall notify the Secretary of State, in writing, within 3 business days of the salesperson's cessation of activities, using the appropriate termination notice form.

D. An application for registration as an investment adviser, duly verified by oath, shall be filed in the office of the Secretary of State, in such form as the Secretary of State may by rule or regulation prescribe, setting forth or accompanied by:

(1) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of the adviser's principal business office and branch offices, if any; the names and addresses of the adviser's partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of the adviser's employees;

(2) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of the adviser's partners, officers, directors, and persons performing similar functions and of any controlling persons thereof;

(3) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(4) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(5) the basis or bases upon which such investment adviser is compensated;

(6) whether such an investment adviser or any partner, officer, director, persons performing similar function or controlling person thereof (i) within ten years of the filing of such application has been convicted of any felony or misdemeanor of which fraud is an essential element, or (ii) is permanently or temporarily enjoined by an order, judgment or decrees from acting as an investment ad-

viser, underwriter, dealer or salesperson, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, and in each case the facts relating to such conviction, order, judgment or decree;

(7) a statement as to whether such investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services; and

(8) such additional information as the Secretary of State may, by rule or regulation prescribe as necessary to determine the applicant's financial responsibility, business repute and qualification to act as an investment adviser.

The Secretary of State shall provide and conduct an examination, to be known as the Investment Adviser Examination, which may be written or oral, or both, for the purpose of determining whether an applicant has sufficient knowledge of the securities business and laws relating thereto to conduct business of a registered investment adviser. The principal executive officer, manager or employee of an applicant which is other than a sole proprietorship, who is actively engaged in the conduct and management of the applicant's investment advisory business in Illinois, shall pass the examination in behalf of the applicant. Any person who was a registered investment adviser prior to September 30, 1963 and has continued to be so registered; and any individual who has within 5 years immediately preceding the application, passed the Investment Adviser Examination or an examination designated by the Secretary of State to be the equivalent thereof by rule or regulation or order; shall not be required to pass the Investment Adviser Examination in order to continue to act as an investment adviser.

The application for registration of an investment adviser shall be accompanied by: (a) a filing fee of \$100, which shall not be returnable in any event, (b) an examination fee of \$25 per individual examined which shall not be returnable after the individual is enrolled for the examination, and (c) consent to service of process, conforming to the requirements of Section 10 of this Act, provided that such consent need not be submitted if the applicant is a corporation organized or authorized to transact business under the laws of this state.

Any change which renders no longer accurate any information contained in any application for registration of an investment adviser shall be reported to the Secretary of State within 10 business days after the occurrence of such change; provided that in respect of assets and liabilities only materially adverse changes need be reported.

E. (1) The registration of a dealer, salesperson or investment adviser may be denied, suspended or revoked if the Secretary of State finds, after notice and opportunity for hearing as provided in subsection (i) of Section 11 hereof, that such dealer, salesperson or investment adviser or any officer, director, partner, member, trustee or manager of such dealer or investment adviser:

(a) has been convicted of a felony, or of any misdemeanor of which fraud is an essential element;

(b) has engaged in any inequitable practice in the sale of securities or in any fraudulent business practice;

(c) has failed to account for any money or property, or has failed to deliver any security, to any person entitled thereto when due or within a reasonable time thereafter;

(d) in the case of a dealer or investment adviser is insolvent;

(e) in the case of a dealer, is selling or has sold securities in this State through a salesperson other than a registered salesperson, or, in the case of a salesperson, is selling or has sold securities in this State for a dealer, issuer or controlling person with knowledge that such dealer, issuer or controlling person has not complied with the provisions of this Act;

(f) has violated any of the provisions of this Act;

(g) has made any material misrepresentation to the Secretary of State in connection with any information deemed necessary for

the Secretary of State to determine a dealer's or investment adviser's financial responsibility or a dealer's, investment adviser's or salesperson's business reputation or qualifications, or has refused to furnish any such information requested by the Secretary of State;

(h) has had a license or registration under any law, Federal, state or territorial, regulating the sale of securities, refused, cancelled, suspended, or withdrawn for fraudulent or felonious conduct or for violation of such law;

(i) in the case of a dealer, fails to maintain a minimum net capital of \$25,000 or such lesser amount as the Secretary of State may by rule or regulation require.

(2) If the Secretary of State finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a dealer, salesperson or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Secretary of State may by order cancel the registration or application.

(3) Withdrawal from registration as a dealer, salesperson or investment adviser becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Secretary of State may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Secretary of State by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Secretary of State may nevertheless institute a revocation or suspension proceeding within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

F. The Secretary of State shall maintain a record, which shall be open for the public inspection, upon which shall be entered the names and addresses of all registered dealers, salespersons and investment advisers and all orders of the Secretary of State denying, suspending or revoking registration.

G. The registration of a dealer and of the salesperson registered upon application of such dealer shall expire on the next succeeding anniversary date of the registration of such dealer. The registration of an investment adviser shall expire on the next succeeding anniversary date of the registration of such investment adviser. A registration of a salesperson

registered upon application of an issuer or controlling person shall expire on the next succeeding anniversary date of such registration, or upon termination or expiration of the registration of the securities, if any, designated in the application for his or her registration. In addition, a salesperson's registration shall terminate upon cessation of his or her employment, or termination of his or her appointment or authorization, in each case by the person who applied for the salesperson's registration. Each application for re-registration shall be accompanied by the same fee as is required for an initial registration.

H. Applications for re-registration of dealers, salespersons and investment advisers shall be filed with the Secretary of State not less than 7 days nor more than 30 days preceding the expiration of the then current registration and shall contain such information as may be required by the Secretary of State upon initial application with such omission therefrom or addition thereto as the Secretary of State may authorize or prescribe. Each application for re-registration shall be accompanied by the same fee as is required for an initial registration. Notwithstanding the foregoing, applications for re-registration of dealers and investment advisers may be filed within the 6 days next preceding the expiration of the then current registration provided that the applicant pays the annual registration fee for the year with respect to which such re-registration is applicable together with an additional amount equal to such annual registration fee.

I. (1) Every registered dealer and investment adviser shall make and keep for such periods, such accounts, correspondence, memoranda, papers, books and other records as the Secretary of State may by **rule or regulation** prescribe. All records so required shall be preserved for 3 years unless the Secretary of State by rule prescribes otherwise for particular types of records.

(2) Every registered dealer and investment adviser shall file such financial reports as the Secretary of State may by **rule or regulation** prescribe.

(3) All the records referred to in subsection I(i) are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the Secretary of State, within or without this state, as the Secretary of State deems necessary or appropriate in the public interest or for the protection of investors.

ADVERTISING

Sec. 9. Except with respect to: (1) securities exempt from registration pursuant to the provisions of Section 3 hereof or sold solely in transactions of the nature set forth in Section 4 hereof, (2) securities registered under both the Federal Securities Act and Section 5 of this Act, (3) advertisements, appearing in newspapers, magazines and periodicals of regular publication and established paid circulation, and (4) the circulation or publication of a preliminary prospectus or identifying statement or circular no person shall in this State issue, circulate, publish or broadcast by radio or television any advertising matter in connection with the sale of any security, unless a copy or script thereof shall have been submitted to, and approved by, the Secretary of State. For the purpose of this section, lists and quotations of securities published without comment shall not be deemed to be advertising matter.

SERVICE OF PROCESS

Sec. 10. (A) A consent to service of process shall be in the form prescribed by the Secretary of State, shall be irrevocable, and shall provide that actions arising out of or founded upon the sale of any securities in alleged violation of this Act may be commenced against the person executing such consent in any court of competent jurisdiction and proper venue within this state, by the service of process upon the Secretary of State.

Service of any process or pleading in any action against a person who has filed hereunder a consent to service of process upon the Secretary of State shall, if made on the Secretary of State, be by duplicate copies, one of which shall be filed in the office of the Secretary of State and the other immediately forwarded by the Secretary of State by registered mail to such person at his latest address on file in the office of the Secretary of State.

(B) (1) The sale or delivery of securities in Illinois, whether effected by mail or otherwise, by any person (unless such securities are exempt from registration under Section 3, or sold in transactions set out in Section 4, or registered prior to such sale under Sections 5, 6 or 7) shall be equivalent to and shall constitute an appointment by such person of the Secretary of State of Illinois, or his successors in office, to be the true and lawful attorney for such person upon whom may be served all lawful process in any action or proceeding against such person, arising out of the sale of such securities.

(2) Service of process under this Sub-section 10 (B) shall be made by serving a copy upon the Secretary of State or any employee in his office designated by him to accept such service for him, provided notice of such and a copy of the process are, within ten days thereafter, sent by registered mail by the plaintiff to the defendant, at the last known address of the said defendant, and the plaintiff's affidavit of compliance herewith, in substantially such form as the Secretary of State may by rule or regulation prescribe, is appended to the summons. The Secretary of State shall keep a record of all such processes which shall show the day and hour of such service.

DUTIES AND POWERS OF THE SECRETARY OF STATE

Sec. 11. (A) The administration of this Act is vested in the Secretary of State, who may from time to time make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this Act, including rules and regulations governing procedures of registration, statements, applications and reports for various classes of securities, persons and matters within his jurisdiction and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the provisions of this Act. Among other things, the Secretary of State shall have authority, for the purposes of this Act, to prescribe the form or forms in which required information shall be set forth, accounting practices, the items or details to be shown in balance

sheets and earning statements, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, in the differentiation of investment and operating income, and in the preparation of consolidated balance sheets or income accounts of any person, directly or indirectly, controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations adopted by the Secretary of State under this Act shall be effective in the manner provided for in "An Act concerning administrative rules" approved June 14, 1951. No provisions of this Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Secretary of State under this Act, notwithstanding that such rule or regulation may, after such Act or omission be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(B) Anything herein to the contrary notwithstanding, if the securities for which statements are submitted to the Secretary of State under the provisions of this Act, may appear to meet the requirements thereof, the Secretary of State shall have the power to refuse to file any statements or to register any securities if there are conditions affecting the soundness of the security so that the sale of such securities would be inequitable, or would work or tend to work a fraud or deceit.

(C) The Secretary of State may, anything in this Act to the contrary notwithstanding, require financial statements and reports of the issuer as often as circumstances may warrant. In addition, the Secretary of State may secure information from or through others and may make or cause to be made investigations respecting the business, affairs and property of the issuer of securities which are the subject of an application for registration under this Act and the costs of such investigation shall be borne by the applicant, provided that such applicant shall not be obligated to pay such costs without his or its consent in advance.

(D) Whenever the Secretary of State shall deem it necessary in the administration of this Act, he may require that the proceeds of sale of the securities of an issuer be held intact until such proceeds aggregate a fixed amount and that such proceeds be held intact under an appropriate agreement of escrow with a bank or trust company.

(E) If in connection with the registration of securities under Section 5 hereof it shall appear that (1) the securities being registered do not meet the earnings test required for the registration of securities under subsection (A) of Section 5 hereof and (2) securities of such issuer of the same class as, or of a class prior to, the securities being registered have within 5 years next preceding the filing of such application been issued for a consideration consisting of one or more patent rights, copyrights, trademarks, or processes or for good will, promotion fees or expenses, or other intangible

assets, the Secretary of State may for the protection of prospective purchasers of the securities being registered, require that the securities issued for such consideration be delivered in escrow to a bank or trust company in Illinois, or to a bank or trust company outside the State of Illinois acceptable to the Secretary of State, authorized to accept and execute trusts under an escrow agreement providing that the owners of the escrowed securities shall not, in case of dissolution or insolvency of the issuer, participate in its assets until after the owners of all the securities of the issuer of the class of those being registered (other than those escrowed) shall have received an amount per unit thereof equal to the public offering price per unit of the registered securities. Such escrow agreement shall remain in force until either (a) there are filed with the Secretary of State and with such bank or trust company financial statements certified by independent public accountants disclosing that the aforesaid earnings test (based, in case of shares of stock not having a specified dividend rate, upon the price at which the registered securities were offered) is met in respect of the registered securities, or (b) the issuer has been legally liquidated or dissolved and each owner of securities of the issuer of the class of those which were registered hereunder (other than those escrowed), shall have received, or shall have had irrevocably set aside for payment to him if he cannot with reasonable effort be located, an amount per unit of such securities equal to the public offering price per unit of the registered securities, or (c) until comparable security, in the opinion of the Secretary of State, is substituted for the securities escrowed.

(F) Whenever it shall appear to the Secretary of State, either upon complaint or otherwise, that the provisions of this Act, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, he may, in his discretion, either require or permit such person to file with the Secretary of State a statement in writing under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate, and may investigate such facts.

(G) For the purpose of all investigations which in the opinion of the Secretary of State, are necessary and proper for the enforcement of this Act, the Secretary of State, or a person designated by him is empowered to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of any books, papers, or other documents which the Secretary of State, or a person designated by him, deems relevant or material to the inquiry. Any Circuit Court of this State, upon application to the Secretary of State, or a person designated by him, may order the attendance of witnesses, the production of books, papers, accounts and documents and the giving of testimony before the Secretary of State, or a person designated by him; and any failure to obey such order may be punished by such Circuit Court as a contempt thereof. The fees of subpoenaed witnesses under this Act for attendance and travel

shall be the same as fees of witnesses before the Circuit Courts of this State, such fees to be paid when the witness is excused from further attendance, provided, such witness is subpoenaed at the instance of the Secretary of State; and payment of such fees shall be made and audited in the same manner as other expenses of the Secretary of State. Whenever a subpoena is issued at the request of a complainant or respondent or defendant as the case may be, the Secretary of State may require that the cost of service and the fee of the witness shall be borne by the party at whose instance the witness is summoned. The Secretary of State shall have power in his discretion, to require a deposit to cover the cost of such service and witness fees and the payment of the legal witness fee and mileage to the witness served with subpoena. A subpoena issued under the provisions of this Act shall be served in the same manner as a subpoena issued out of a court of record. The Secretary of State may in any investigation, cause the taking of depositions of witnesses residing within or without the State of Illinois in the manner provided in civil actions under the laws of Illinois.

(H) Anything in this Act to the contrary notwithstanding, if the Secretary of State shall find that the sale or proposed sale or method of sale of any securities, whether exempt or not, except the sale of securities as defined in subsection (A) of Section 3, in the State of Illinois, is fraudulent, inequitable or would work or tend to work a fraud or deceit, or is being sold in violation of any of the provisions of Section 12, the Secretary of State shall by written order prohibit or suspend the sale of such securities or deny or revoke the registration of such securities. In addition, if the Secretary of State shall find that any person is engaging or has engaged in the business of selling securities as a dealer or salesman or is acting or has acted as an investment adviser, without prior thereto and at the time thereof, having complied with the registration requirements of this Act, the Secretary of State may, by written order, prohibit or suspend such person from engaging in the business of selling or offering for sale securities, or acting as an investment adviser, in the State of Illinois.

(1) The Secretary of State shall not deny, suspend or revoke the registration of securities, the registration of a dealer, salesman or investment adviser, or prohibit or suspend the sale of any securities, or prohibit or suspend a dealer or salesman from engaging in the business of selling or offering for sale securities, or prohibit or suspend a person from acting as an investment adviser, except after an opportunity for hearing upon not less than ten days notice given by personal service or registered mail to the person or persons concerned. Such notice shall state the date and time and place of such hearing, shall contain a brief statement of the proposed action of the Secretary of State and the grounds for such proposed action. Anything herein contained to the contrary notwithstanding, the Secretary of State may temporarily prohibit or suspend the sale or registration of securities or the registration of a dealer or salesman without the notice and prior hearing in this subsection pre-

scribed, if the Secretary of State shall in his opinion deem it necessary. Immediately after taking action without such notice and hearing, the Secretary of State shall give to the person or persons concerned confirmed telegraphic notice thereof and of the date, time and place of a hearing to be held thereon and shall conduct such hearing as soon as reasonably may be after the giving of such notice, and shall thereupon take such action as may be appropriate under the facts developed. The findings and decision of the Secretary of State upon the conclusion of each final hearing held pursuant to this sub-section shall be set forth in a written order signed by the Secretary of State and shall be filed as a public record. All hearings shall be held before the Securities Commissioner or a person designated by the Secretary of State, and appropriate records thereof shall be kept.

(J) The action of the Secretary of State in denying, suspending or revoking the registration of a dealer, salesman, or investment adviser, or in prohibiting any person from engaging in the business of selling securities as a dealer or salesman, or from prohibiting a person from acting as an investment adviser, or denying, suspending or revoking the registration of securities or prohibiting or suspending the sale or proposed sale of securities shall be subject to judicial review in the Circuit Court of any County in this State. The provisions of the Administrative Review Act, approved May 8, 1945, and all amendments and modifications thereof and the rules adopted pursuant thereto, are hereby adopted and shall apply to and govern every action for the judicial review of final actions or decisions of the Secretary of State hereunder.

(K) Whenever it shall appear to the Secretary of State that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule or regulation prescribed under authority thereof, the Secretary of State may in his discretion, through the Attorney General, apply for an injunction without notice, and upon a proper showing, any court of competent jurisdiction shall have power to issue a permanent or temporary injunction or restraining order without bond, to enforce the provisions of this Act, in addition to the penalties and other remedies in this Act provided; and either party to such suit shall have the right to prosecute an appeal from the order of judgment of the Court.

(L) In no case shall the Secretary of State, or any person designated by him, in the administration of this Act, incur any official or personal liability by instituting an injunction or other proceeding or by denying, suspending or revoking the registration of a dealer or salesman, or by denying, suspending or revoking the registration of securities, or prohibiting the sale of securities, or by suspending or prohibiting any person from acting as a dealer, salesman or investment adviser.

(M) No provision of this Act shall be construed to require, or to authorize the Secretary of State to require any investment adviser engaged in rendering investment supervisory services to

disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this Act.

(N) Whenever, after an examination, investigation, or hearing, the Secretary of State deems it of public interest or advantage, he may certify a record to the State's Attorney of the county in which the act complained of, examined or investigated occurred. The State's Attorney of that county within ninety days after receipt of the record shall file a written statement at the Office of the Secretary of State, which statement shall set forth the action taken upon the record, or if no action has been taken upon the record that fact, together with the reasons therefor, shall be stated.

VIOLATION

Sec. 12. It shall be a violation of the provisions of this Act for any person:

A. To sell any security except in accordance with the provisions of this Act;

B. To deliver to a purchaser any security required to be registered under Section 5, Section 6 or Section 7 hereof unless accompanied or preceded by a prospectus that meets the requirements of the pertinent subsection of Section 5 or of Section 6 or of Section 7;

C. To act as a dealer, salesman or investment adviser unless registered as such, where such registration is required, under the provisions of this Act;

D. To fail to file with the Secretary of State any application, report or document required to be filed under the provisions of this Act or any rule or regulation made by the Secretary of State pursuant to this Act or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 hereof;

E. To make, or cause to be made, (1) in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant to this Act, any statement which was false or misleading with respect to any material fact or (2) any statement to the effect that a security (other than a security issued by the State of Illinois) has been in any way endorsed or approved by the Secretary of State or the State of Illinois;

F. To engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof;

G. To obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

H. To sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act knowing or having reasonable grounds to know any material representation therein contained to be false or untrue;

I. To employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly;

J. When acting as an investment adviser, by any means or instrumentality, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud any client or prospective client;

(2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(3) To engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative. The Secretary of State shall for the purpose of this Paragraph (3) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative.

CIVIL REMEDIES

Sec. 13. A. Every sale of a security made in violation of the provisions of this Act shall be voidable at the election of the purchaser exercised as provided in subsection B of this Section; and upon tender to the seller or into court of the securities sold or, where the securities were not received, of any contract made in respect of such sale, the issuer, controlling person, underwriter, dealer or other person by or on behalf of whom said sale was made, and each underwriter, dealer or salesman who shall have participated or aided in any way in making such sale, and in case such issuer, controlling person, underwriter, or dealer is a corporation or unincorporated association or organization, each of its officers and directors (or persons performing similar functions) who shall have participated or aided in making such sale, shall be jointly and severally liable to such purchaser for (1) the full amount paid, together with interest from the date of payment for the securities sold at the rate of the interest or dividend stipulated in the securities sold (or if no rate is stipulated, then at the legal rate of interest) less any income or other amounts received by such purchaser on such securities and (2) the reasonable fees of such purchaser's attorney incurred in any action brought for recovery of the amounts recoverable hereunder.

B. Notice of any election provide for in subsection A of this Section shall be given by the purchaser, within 6 months after the purchaser shall have knowledge that the sale of the securities to him is voidable, to each person from whom recovery will be sought, by registered letter addressed to the person to be notified at his last known address with proper postage affixed, or by personal service;

C. No purchaser shall have any right or remedy under this Section who shall fail, within 15 days from the date of receipt thereof, to accept an offer to repurchase the securities purchased by him for a price equal to the full amount paid therefor plus interest thereon and less any income thereon as set forth in subsection A of this Section. Every offer of repurchase provided for in this subsection shall be in writing, shall be delivered to the purchaser or sent by registered mail addressed to the purchaser at his last known address, and shall offer to repurchase the securities sold for a price equal to the full amount paid therefor plus interest thereon and less any income thereon as set forth in subsection A of this Section. Such offer shall continue in force for 15 days from the date on which it was received by the purchaser, shall advise the purchaser of his rights and the period of time limited for acceptance thereof, and shall contain such further information, if any, as the Secretary of State may prescribe. Any agreement not to accept or refusing or waiving any such offer made during or prior to said 15 days shall be void.

D. No action shall be brought for relief under this Section or upon or because of any of the matters for which relief is granted by this Section after 3 years from the date of sale.

E. The term purchaser as used in this Section shall include the personal representative or representatives of the purchaser.

PENALTIES

Sec. 14. A. Any person who violates any of the provisions of sub-sections A, B, C, and D of Section 12 of this Act shall be guilty of a misdemeanor and, upon conviction thereof shall be fined not more than \$5,000 or, if a natural person, imprisoned in the county jail not exceeding one year, or both.

B. Any person who violates any of the provisions of Subsections E, F, G, H, I, and J of Section 12 of this Act shall be guilty of a felony and, upon conviction thereof shall be fined not more than \$10,000 or, if a natural person, imprisoned in the penitentiary not exceeding three years, or both.

C. No prosecution for violation of any provision of this Act shall bar or be barred by any prosecution for the violation of any other provision of this Act or of any other statute; but all prosecutions under this Act or based upon any provision of this Act must be commenced within 3 years after a violation upon which such prosecution is based.

D. For the purpose of this Act all persons who shall sell or offer for sale securities in violation of the provisions of this Act, or who shall in any manner knowingly authorize, aid or assist in any unlawful sale or offering for sale, shall be deemed equally guilty, and may be tried and punished in the county in which said unlawful sale or offering for sale was made, or in the county in which the securities so sold or offered for sale were delivered or proposed to be delivered to the purchaser thereof.

E. Any person who shall be guilty of a second or any subsequent offense specified in Section 12 of this Act, upon conviction thereof shall be fined not more than twenty-five thousand \$25,000 dollars for such second or subsequent offense or if a natural person, may be imprisoned in the penitentiary not exceeding five years or both.

F. This Act shall not be construed to repeal or affect any law now in force relating to the organization of corporations in this State or the admission of any foreign corporation to do business in this State.

EVIDENTIARY MATTERS

Sec. 15. A. In any action, civil or criminal, where a defense is based upon any exemption provided for in this Act, the burden of proving such exemption shall be upon the party raising such defense.

B. In any action, civil or criminal, a certificate under the seal of state, signed by the Secretary of State, stating compliance or non-compliance with the provisions of this Act, shall constitute prima facie evidence of such compliance or non-compliance with the provisions of this Act and shall be admissible in any such action. Such certificate of compliance or non-compliance shall be furnished by the Secretary of State upon application therefor and the payment of a certification fee of \$2.

C. In any action, civil or criminal, copies, photostatic or otherwise, certified by the Secretary of State of any documents filed in his office and of any of his records shall be admissible with the same effect as the original of such documents or records would have if actually produced.

SAVINGS CLAUSES

Sec. 16. A. Notwithstanding any repeal provisions of this Act, the provisions of the Act entitled "An Act relating to the sale or other disposition of securities and providing penalties for the violation thereof and to repeal Acts in conflict therewith," approved June 10, 1919, as amended, shall remain in force (1) for the prosecution and punishment of any person who, before the effective date of this Act, shall have violated any provision of said Act approved June 10, 1919, as amended, (2) for the enforcement of civil rights and liabilities in the case of sales, contracts, agreements, or other arrangements entered into prior to the effective date of this Act, (3) for carrying out the terms of escrow agreements made pursuant to the provisions of said Act approved June 10, 1919, as amended, and (4) for the retention, enforcement and liquidation of deposits made with the Secretary of State pursuant to the provisions of Section 6a of said Act approved June 10, 1919, as amended.

B. Every dealer and salesman registered for the registration period expiring June 30, 1954, under the provisions of said Act

approved June 10, 1919, as amended, shall be deemed to be registered under the provisions of Section 8 of this Act until June 30, 1954, and shall be entitled during the month of June, 1954, to file an application for re-registration pursuant to the provisions of sub-section F of Section 8 of this Act. Any registered dealer may, upon appropriate application to the Secretary of State at any time prior to June 30, 1955, accelerate the expiration date of its then current registration and shall concurrently file an application for re-registration expiring on the anniversary of such accelerated date.

C. All securities, other than Investment Fund Shares and Investment Contracts, registered or qualified under said Act approved June 10, 1919, as amended, and registered or qualified thereunder on the date this Act becomes effective shall be deemed to be securities registered under this Act; provided, that the registration of such securities shall expire June 30, 1954.

D. Investment fund shares registered or qualified under said Act approved June 10, 1919, as amended, and registered or qualified thereunder on the date this Act becomes effective shall be deemed to be registered under this Act; provided that the registration of such securities, unless renewed as provided in Section 7 of this Act, shall expire on June 30, 1954 or on the first anniversary of the latest registration or renewed registration of such investment fund shares under said Act approved June 10, 1919, as amended, whichever date shall later occur.

E. Investment contracts qualified under said Act approved June 10, 1919, as amended, and continuing to be qualified thereunder on the date this Act becomes effective shall be deemed to be registered under this Act until June 30, 1954 or until earlier re-registered under Section 6 of this Act.

SEPARABILITY OF PROVISIONS

Sec. 17. If any provision or provisions of this Act shall be held invalid, the remainder of this Act shall not be affected thereby.

REPEAL

Sec. 18. All the provisions of the Act entitled "An Act relating to the sale or other disposition of securities and providing penalties for the violation thereof and to repeal Acts in conflict therewith," approved June 10, 1919, as amended, except the provisions and parts of said Act continued in force and effect by Section 16 hereof, are hereby repealed.

EFFECTIVE DATE

Sec. 19. This Act shall become effective January 1, 1954.



REAL ESTATE INVESTMENT TRUSTS

AN ACT to define the liability of shareholders and beneficiaries of real estate investment trusts. (Approved May 24, 1963)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Sec. 1. For the purposes of this Act "real estate investment trust" means an unincorporated trust or association which complies or intends to comply with Sections 856, 857 and 858 of the Federal Internal Revenue Code of 1954, as amended, or such section or sections of any subsequent Internal Revenue Code as may be applicable to organizations described in Public Law 86-779, enacted by the Congress of the United States.

Sec. 2. The shareholders or beneficiaries of a real estate investment trust shall not, as such, be personally liable for any of its obligations arising after the effective date of this Act, nor shall persons who become shareholders or beneficiaries after the effective date of this Act be personally liable, as such, for obligations of the real estate trust. If an application for registration of the securities issued or issuable by such unincorporated trust or association has been registered by the Secretary of State pursuant to Section 5 of "The Illinois Securities Law of 1953", as heretofore and hereafter amended, such registration shall be conclusive evidence that an unincorporated trust or association is a real estate investment trust as to all persons who become shareholders or beneficiaries after the registration date and prior to its suspension or revocation, if any, and as to all obligations of the unincorporated trust or association arising after the effective date of this Act whether they arose before or after the effective date of registration under Section 5 of "The Illinois Securities Law of 1953", and prior to suspension or revocation of the registration.